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Supreme Court, U.S.
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NO. 92-1091

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

CLARENCE H. HOLDING, d/b/a
CLARENCE H. HOLDING & COMPANY,
Petitioner,

v.

LEWIS W. BROTHERS, JR., ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

BRIEF IN OPPOSITION

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26 pp

QUESTIONS PRESENTED

Was Petitioner denied the due process of law guaranteed by the fourteenth amendment of the United States Constitution (i) when the Circuit Court of Westmoreland County, Virginia ruled that his cause of action was barred by the statute of limitation established by the Code of Virginia or (ii) when his petition for appeal filed with the Supreme Court of Virginia was denied by a three-Justice panel, one member of which was formerly acquainted with Respondents?

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OPINION BELOW

The September 18, 1992, March 17, 1992, and August 14, 1992, orders of the Supreme Court of Virginia are not (and will not be) reported. The November 13, 1991, December 12, 1991, January 6, 1992, and March 6, 1992, orders of the Circuit Court of Westmoreland County, Virginia are not (and will not be) reported.

CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV, § 1 of the Constitution of the United States of America:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On or about September 3, 1991, Holding, acting pro se, filed in the Circuit Court of Westmoreland County, Virginia a pleading captioned "Motion for Judgment and Damages" (App. to Pet., p. "D"). The relief sought by Holding was $10,000,000 in compensatory damages from each Defendant (i.e., each of the Respondents herein) and treble that amount in punitive damages from the Defendants. The pleading failed to identify any statutory or other specific cause of action, but stated (in ¶ 3) that "the basis for this action" is a criminal felony charge issued against Holding (on September 2, 1989), which was dismissed on January 11, 1990. The Circuit Court deemed the case to be an action for malicious prosecution, sustained the

Defendants' plea of the statute of limitation, and dismissed the case (Cir. Ct. Order of 12/12/91, App. to Pet., unnumbered page).

Va. Code § 8.01-248 (1992) provides: "Every personal action, for which no limitation is otherwise prescribed, shall be brought within one year after the right to bring such action has accrued." The Revisers' Note to this Code section states that "[s]ection 8.01-248 is a catch-all provision for actions not otherwise covered by a statute of limitation; e.g., malicious prosecution and abuse of process" (emphasis added). Va. Code § 8.01-249, subsection 3 (1992) prescribes that a cause of action for malicious prosecution (as well as for abuse of process) is deemed to accrue when the relevant criminal action is terminated.

In this matter, the relevant criminal action was terminated on January 11, 1990, one year and almost nine months before Holding filed his motion for judgment in the Westmoreland County Circuit Court.

Sometime following dismissal of the motion for judgment, Holding filed a petition appealing the lower court's dismissal of his motion, and several other petitions, with the Supreme Court of Virginia. All of these pleadings were denied (App. to Pet., p. "B"). Among other assertions, Holding claims that he was denied due process of law by the Virginia Supreme Court because one member of the three-Justice panel which heard oral arguments and ruled on his petitions is a former member of the State Corporation Commission, the employer of all the Respondents, except Ms.

Watts (hereinafter, "Respondents" refers to Brothers, Zoeckler, Parthum and Silverman).

The Petition (p. 5) identifies the members of the panel as Justices "Christine," Poff, and Lacy. Repeated references to these Justices are made throughout the Petition. According to the Clerk's Office of the Virginia Supreme Court, Mr. Justice A. Christian Compton, Mrs. Justice Elizabeth B. Lacy and Mr. Senior Justice Richard H. Poff comprised the panel which heard arguments on the petition for appeal. In addition, the Clerk's Office advised that Holding's other pleadings were decided without oral arguments.

Immediately prior to becoming a member of the Supreme Court of Virginia on January 4, 1989, Justice Lacy was a

Commissioner of the State Corporation Commission, a department of state government established by article IX of the Constitution of Virginia. Justice Lacy's tenure as a Commissioner was from April 1, 1985, through December 31, 1988.

The State Corporation Commission ("Commission") is a regulatory body charged with the administration and enforcement of Virginia's laws concerning the regulation and supervision of public utility operations, insurance, state-chartered financial institutions, rail and truck transportation, investment securities and retail franchises. In addition, the Commission assesses public service corporations for state and local taxation, administers the formation and registration provisions of the

corporation, limited partnership and limited liability company statutes of the Commonwealth, and is the central filing office under the "Secured Transactions" provisions of the Uniform Commercial Code.

The Commission has been in continuous operation since March 1903. During the years Justice Lacy was a Commissioner, the Commission had thirteen operating divisions and 500-600 employees. One of the operating divisions was (and is) the Division of Securities and Retail Franchising, of which Respondent Brothers is the Director and Respondents Zoeckler, Parthum and Silverman are employees. While a Commissioner, Justice Lacy worked with some or all of these Respondents, as well as with many of the other employees of the Commission.

SUMMARY OF ARGUMENT

The Petition should be denied for the reasons that it fails to meet the "special and important reasons" standard enunciated in Rule 10.1 of the Rules of this Court and it fails the "accuracy, brevity, and clearness" test of Rule 14.5. Furthermore, Holding's due process guarantees were fully accorded below, and his Petition raises no other federal question of any significance.

ARGUMENT

At the outset, Respondents urge that denial of the Petition is warranted because it fails to set forth a reason for review that meets any of the elements of this Court's Rule 10.1. The only courts referred to in the Petition are courts of the Commonwealth of Virginia, so, clearly, Rule 10.1(a) does not apply here. Holding

has not identified a Virginia Supreme Court decision involving a federal question which conflicts with the decision of another state court of last resort or of a United States court of appeals; thus, Rule 10.1(b) provides no basis for granting the Petition. Likewise, paragraph (c) of Rule 10.1 is inapplicable as there is no reference in the Petition to a decision of the Supreme Court of Virginia involving a question of federal law either that should be answered by this Court or that conflicts with applicable decisions of this Court. As is evident from the content of the Petition, it does not present any "special and important reasons" that justify this Court's review of the proceedings below.

The only questions properly before this Court are whether Petitioner was

denied due process of law (i) by the dismissal of his motion for judgment filed in the Circuit Court of Westmoreland County or (ii) by the manner in which his petition for appeal was decided by the Supreme Court of Virginia. The other purported questions presented by Holding were not reviewed by the Virginia Supreme Court and are primarily arguments and conclusions unsupported by fact or law.

The gravamen of Holding's complaint is his dissatisfaction with the Circuit Court's interpretation of, and ruling on, his motion for judgment. Because Petitioner, acting pro se, filed a pleading that was not clearly and precisely drafted, the trial court was put to the burden of educing the nature of the action from the substance of the document. In that court's view of the motion for

judgment, the cause of action was based on the alleged malicious prosecution of Petitioner at the behest of Respondents. Under Virginia law, such a cause of action must be brought within one year from the date the prosecution was terminated (Va. Code §§ 8.01-248 and 8.01-249). In the case at bar, that date was January 11, 1990, nineteen months before Holding filed his motion for judgment.

In light of the facts of the case before it and the applicable statute, the Circuit Court sustained Respondents' plea of the statute of limitation and dismissed the action. Nothing concerning this dismissal resulted in Holding being denied due process of law. To the contrary, he was accorded due process, but it was conditioned upon his acting in a

timely manner -- a condition he failed to meet.

This Court has held that the fourteenth amendment's guarantee of due process of law is not violated, per se, by a State imposed statute of limitation. In Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), the Court stated:

> Obviously, nothing we have said entitles every civil litigant to a hearing on the merits in every case. The State may erect reasonable procedural requirements for triggering the right to an adjudication, be they statutes of limitations, ... or, in an appropriate case, filing fees. And the State certainly accords due process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule.

Id. at 437 (citations omitted; emphases added).

The one-year limitation period established by Va. Code §§ 8.01-248 and 8.01-249 is a reasonable requirement. Petitioner has not argued otherwise.

The only other constitutional matter that Holding has raised which elicits a response is the assertion that he was denied due process of law because Justice Lacy participated in hearing oral argument and ruling on his pleadings filed with the Supreme Court of Virginia. Respondents believe this assertion is without merit, but feel compelled to respond to it because of the negative implication it creates.

The bases of this contention are (i) that Justice Lacy worked with and supervised Respondents during the three-and-one-half years she was a Commissioner of the State Corporation Commission, and (ii) that she was a participant in the three-Justice panel that ruled on several pleadings Holding filed with the Virginia Supreme Court. Respondents agree with the foregoing statements except that,

according to the Virginia Supreme Court Clerk's Office, Holding's petition for appeal was the only one of his several pleadings on which the three-Justice panel heard oral argument and made a decision. The other pleadings were decided by "the Court."

It is well established that the bias and prejudice of a judge involved in a proceeding can result in a party to the proceeding being denied due process of law. However, it is also recognized that "only in the most extreme of cases would disqualification on this basis be constitutionally required...." Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813, 821 (1986). In the late 1940's, this Court expressed the opinion that it was a violation of the fourteenth amendment "to subject [a person's] liberty or property to the judgment of a court the judge of

which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case." Tumey v. Ohio, 273 U.S. 510, 523 (1948). The Court went on to say that a disqualifying situation is one "which would offer a possible temptation to the average ... judge to ... lead him not to hold the balance nice, clear and true...." Id. at 523.

The Petition is devoid of any allegations that approach the criteria espoused in Tumey, much less the "extreme case" standard expressed in Aetna Life Insurance. The reason for this absence is, simply, that no such facts exist in this case.

Justice Lacy was a member of the State Corporation Commission between April 1985 and December 1988. In July 1992, when Holding's petition for

appeal was argued before the panel, Justice Lacy had been gone from the Commission for three-and-one half years. Surely, this amount of time is sufficient to quell any "possible temptation," Tumey, supra, Justice Lacy ever may have entertained as a result of her former association with Respondents.

Justice Lacy, as well as the other members of the Supreme Court of Virginia, are bound by the Canons of Judicial Conduct of the State of Virginia (these Canons comprise Part 6, § III of the Rules of the Supreme Court of Virginia, and are published in Vol. 11 (1992) of the Code of Virginia). Canon 2 B charges a judge to "not allow his family, social or other relationships to influence his judicial conduct or judgment." Canon 3 A (1) warns a judge not to be swayed by "partisan interests."

Acceptance of Petitioner's conflict-of-interest contention would be tantamount to a finding that Justice Lacy not only acted contrary to the principles applicable to her judicial conduct, but also violated her oath of office (see Va. Code § 49-1 (1989)). Nothing in the Petition comes close to supporting such a finding or to overcoming a basic premise on which this country's judicial system is built -- that those acting in an adjudicatory capacity will exercise fairness and impartiality.

Rule 14.5 of this Court provides that "[t]he failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition." A cursory review of the

Petition compels the conclusion that it falls squarely within the purview of this Rule.

Failure to comply with the "brevity" and "clearness" requisites is apparent from the beginning of the Petition. The "Questions Presented to the Court for Review" portion, as well as other areas of the Petition, is couched mostly in argumentative statements and conclusions. Consequently, the questions for review are neither concisely nor clearly presented.

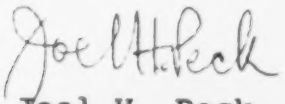
The Petition's inaccuracies are evidenced by its references to, and arguments concerning, Va. Code §§ 8.01-243, 18.2-499 and 18.2-500. Because Holding's motion for judgment was barred by a statute of limitation, these Code sections were not involved in the proceedings below and, consequently, are not before this Court.

In sum, the only issue before the Court is whether Petitioner's due process rights were denied by the Virginia courts. It is clear that they were not.

CONCLUSION

The Petition should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 1993, three copies of the foregoing Brief in Opposition were mailed by first class mail, postage prepaid to each of the following:

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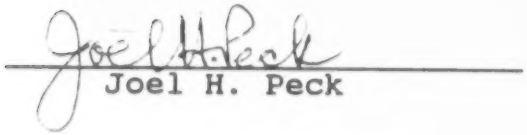

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